



DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2022-0004]

Pipeline Safety: Pipeline Safety Enhancement Programs

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: This notice outlines how PHMSA will review and process Pipeline Safety Enhancement Program (PSEP) requests from pipeline owners and operators (PSEP applicants or applicants) to implement safety-enhancing testing programs for innovative technologies and operational practices on natural gas and hazardous liquid (HL) pipeline facilities. PHMSA will review each PSEP application and provide regulatory oversight of each approved PSEP, in accordance with the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (PIPES Act of 2020), to ensure the safety measures in each achieve a level of safety greater than the level of safety provided by the federal pipeline safety regulations (PSR).

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202-366-0113, or by e-mail at kay.mciver@dot.gov.

Technical: Mr. Steve Nanney by telephone at 713-272-2855, or by e-mail at steve.nanney@dot.gov.

SUPPLEMENTARY INFORMATION: Section 104 of the PIPES Act of 2020 (Pub. L. 116-260 (Division R)) incorporated within the federal pipeline safety laws (49 U.S.C. 60101 et seq.) at section 60142, authorizes the establishment of PSEPs to evaluate innovative technologies and operational practices providing more robust protection of public safety and the environment than the existing PSR governing natural gas and HL pipeline facilities. PHMSA's review of PSEP applications, and its subsequent regulatory oversight of approved PSEPs, will build on PHMSA's

longstanding, proven special permit processes to ensure robust stakeholder engagement and careful consideration of public safety concerns, potential environmental impacts, and state interests. PHMSA may subsequently undertake rulemakings to revise the PSR to accommodate promising technological and operational practices evaluated in PSEPs.

Pipeline owners and operators (collectively, operators) may only apply for a PSEP through December 21, 2023. A PSEP shall not exceed a duration of three (3) years after the approval date. Only natural gas pipeline facilities regulated under 49 CFR part 192 and HL pipeline facilities regulated under 49 CFR part 195 are eligible for PSEPs. Congress has not granted PHMSA authority to renew PSEPs following that initial, three-year period. PHMSA will review PSEP applications and waive compliance with one or more of the provisions of the PSR while imposing compliance conditions that will be set out in an order approving the PSEP. PHMSA will, consistent with a statutory requirement in the PIPES Act of 2020, administer PSEPs to ensure they achieve a level of safety that is greater than the level of safety required by the PSR.

APPLICATION PROCESS

PSEP applications must follow the following requirements:

- 1) Applications must be submitted to the PHMSA Associate Administrator for Pipeline Safety in accordance with 49 CFR 190.341(b)(2).
- 2) Applications must contain information in accordance with 49 CFR 190.341(c), as elaborated and supplemented below in Items 3 through 11.
- 3) Applications must include a draft environmental assessment (DEA) in accordance with 49 CFR 190.341(c)(8).
 - a. PHMSA will review each DEA to ensure it complies with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., as implemented by the Council on Environmental Quality regulations at 40 CFR parts 1500-1508, U.S. Department of Transportation (DOT) Order

No. 5610.1C, and any other pertinent regulations or policies implementing NEPA, as applicable.

- b. PHMSA will analyze the PSEP application to determine whether the proposed action could have a significant impact on the human environment. PHMSA will analyze applications for potential risks to public safety and impacts to the environment that could result from PHMSA's decision to grant, grant with additional conditions, or deny the application.
- c. The DEA that the applicant provides must provide an analysis, consistent with principles set forth in DOT Order 5610.2C, of whether the proposed action will have disproportionately high and adverse human health or environmental effects on minority and low-income populations. Such analysis must include demographic information about the community within a half-mile vicinity on each side of the pipeline and past the pipeline endpoints of the relevant site(s). The applicant must use the U.S. Environmental Protection Agency Environmental Justice mapping and screening tool called EJSCREEN for its environmental justice analysis.
- d. As part of its review of an application, PHMSA will evaluate whether the application, if granted, will impact the likelihood or consequence of a pipeline failure as compared to the operation of the pipeline in full compliance with the PSR.
- e. PHMSA will provide, on request, an example environmental assessment, a template, and the environmental justice information requirements for applicants to use in generating and submitting a DEA.

- 4) Applications must include a map of the pipeline segment affected by the testing program at a 1:24,000 scale showing the county and state roads and highways. PHMSA may request maps with additional information based upon the testing program.
- 5) Applications must identify each of (i) the applicant's entire natural gas or HL pipeline system (as appropriate) including the mileage of pipeline facilities that are regulated under either 49 CFR part 192 (gas pipeline) or part 195 (HL pipeline); and (ii) the mileage of pipeline, and resulting percentage of the applicant's natural gas or HL pipeline system, that would be subject to the PSEP application.
- 6) Applications must not include pipeline segments that are located in, or which could affect¹, high consequence areas (HCAs) as defined in 49 CFR 192.903 for gas pipelines, or HCAs, including unusually sensitive areas (USAs), as defined in 49 CFR 195.450 and 195.6, respectively, for HL pipelines. Pipeline facilities located in, or which could affect, HCAs and USAs are prohibited from PSEPs.
- 7) Applications must identify safety measures for the PSEP that are designed to achieve a level of safety that is greater than the level of safety required by either 49 CFR part 192 or 49 CFR part 195, as applicable. Applications must also identify the specific provisions of the PSR for which a waiver is sought.
- 8) Applications must include the accident and incident record of the operator for the past 10 years.
- 9) Applications must describe each operator's safety management system (SMS) for all its 49 CFR part 192 and 49 CFR part 195 regulated pipelines and identify the SMS procedures that would be applicable to the PSEP, to include any processes

¹ PHMSA expects this eligibility limitation will ensure adequate protection for areas (specifically, HCAs) that the PSR recognize as being particularly vulnerable to the public safety and the environmental risks from natural gas or HL pipeline facilities in the vicinity.

and procedures that provide a framework to disclose and manage risk, promote a learning environment, and continuously improve pipeline safety and integrity.

- 10) Applications must describe the safety technology or operational practice that the applicant is proposing, including any research and development program that the technology or operational practice underwent.

PUBLIC NOTICE

Prior to PHMSA approving each PSEP application, PHMSA will publish a notice in the Federal Register and solicit comments on the PSEP application. PHMSA will assign a docket number in the Federal Docket Management System (FDMS) located at *www.Regulations.gov* for each PSEP application, the docket will include the Federal Register notice alerting the public of the application and will include all other pertinent documents for public review, including public comments.

The comment period will be for a minimum of 90 days for each PSEP application. Comments received after the closing date will be evaluated if it is possible to do so without incurring additional expense or delay.

LIMITATIONS IN MILEAGE AND PROHIBITED AREAS

Per 49 U.S.C. 60142, all PSEPs approved by PHMSA may not, in the aggregate, apply to more than 5 percent of the total miles of either natural gas or HL pipelines in the United States that are regulated by PHMSA or a state authority under 49 U.S.C. 60105 or 60106. Furthermore, the aggregate mileage of each of an operator's natural gas or HL pipeline miles in PSEPs must be limited to the lesser of either (1) 1,000 miles; or (2) 38 percent of the total miles of natural gas or HL pipelines in the operator's natural gas system or HL system that are regulated by PHMSA or a state authority under 49 U.S.C. 60105 or 60106. Finally, PSEPs will not apply to pipeline segments located within, or which could affect, HCAs as defined in 49 CFR 195.450 and 192.903, including USAs as defined in 49 CFR 195.6.

SAFETY STANDARDS AND PHMSA REVIEW CONSIDERATIONS

Each PSEP must incorporate innovative safety technologies and operational practices improving the reliability, accuracy, durability, or certainty of pipeline safety technologies, techniques, or methods. Safety measures for a proposed PSEP must be designed to achieve, and will be evaluated by PHMSA to ensure, a level of safety that is *greater than* the level of safety required by either 49 CFR part 192 for natural gas pipelines or 49 CFR part 195 for HL pipelines, as applicable. This standard exceeds the minimum level of safety that is required for issuance of a special permit, as described in 49 CFR 190.341(d)(2). PHMSA will only waive safety regulations in either 49 CFR part 192 or part 195 that would otherwise prevent the use of the safety technology or operational practice to be tested.

In evaluating each PSEP application to ensure a level of safety greater than the level of safety required by either 49 CFR part 192 for natural gas pipelines or 49 CFR part 195 for HL pipelines, PHMSA will consider information in the PSEP application as well as the following:

- 1) The applicant's pipeline accident or incident record;
- 2) Whether the applicant has an SMS in place; and how the application proposes to eliminate or mitigate potential safety and environmental risks throughout the duration of the program;
- 3) Whether the proposed safety technology or operational practice has been adequately tested through a research and development program, collaborative research development organizations, or other institutions; and
- 4) Comments received in the docket for that PSEP application.

PHMSA will publish its decision on whether to grant or deny the proposed PSEP application, in the docket for that application. PHMSA may, in granting a PSEP application, impose such conditions as PHMSA determines are appropriate. The effective date of a PSEP will not be made retroactive to a date preceding the publication date of PHMSA's decision.

DATA AND FINDINGS

Operators must submit to PHMSA detailed findings and an annual report with a summary of data collected as a result of participation in the PSEP. PHMSA will make the annual report for each ongoing testing program available to the public on PHMSA's web site (at www.phmsa.dot.gov/pipeline/special-permits-state-waivers/special-permits-and-state-waivers-overview) and in the corresponding FDMS located at www.Regulations.gov.

AUTHORITY TO REVOKE PARTICIPATION

Pursuant to the PIPES Act of 2020, PHMSA shall immediately revoke a PSEP if:

- 1) The operator has an accident or incident involving death or personal injury necessitating in-patient hospitalization and the testing program is determined to be the cause of, or a contributing factor to, that accident or incident.
- 2) The operator fails to comply with the terms and conditions of the testing program.
- 3) PHMSA determines that continuation of the PSEP by the operator would be unsafe or would not be consistent with the public safety and environmental protection goals and objectives of 49 CFR part 192 or part 195, as applicable.

Because the statute mandates PHMSA "immediately" revoke a PSEP in the event of the above conditions, such revocations will not be subject to the "show cause" process for special permits set forth in 49 CFR 190.341(j)(2). PHMSA may, in the event of a violation of a PSEP's terms and conditions, pursue enforcement action as contemplated by 49 CFR 190.341(m).

STATES' RIGHTS

Following publication in the Federal Register of a notice announcing a PSEP, PHMSA will send that notice directly to each state in which a pipeline segment within the proposed PSEP is located. Those states may submit comments in the pertinent docket, or request exemption from a proposed PSEP by sending the request to the PHMSA Associate Administrator for Pipeline Safety for any proposed PSEP either prior to, or within 30 days after, PHMSA grants a PSEP. If a state has not submitted an exemption request in the above defined interval, the state

shall not enforce any law (including regulations) that is inconsistent with the PSEP order in effect in the state.

PHMSA REPORTS TO CONGRESS

PHMSA will submit a report to Congress at the conclusion of each PSEP and make those reports available to the public on PHMSA's web site at: www.phmsa.dot.gov/pipeline/special-permits-state-waivers/special-permits-and-state-waivers-overview and in the FDMS located at www.Regulations.gov for each operator's application in the assigned docket number. The report will contain:

- 1) The findings and conclusions determined by PHMSA with respect to the testing program; and
- 2) Any recommendations by PHMSA with respect to the testing program, including any recommendations for amendments to laws (including the PSR) and the establishment of standards, that:
 - a. Would enhance the safe operation of interstate gas or HL pipeline facilities; and
 - b. Are technically, operationally, and economically feasible.

REGULATORY UPDATES

If a report to Congress discussed above indicates that it is practicable to establish technically, operationally, and economically feasible standards for the use of a safety-enhancing technology and any corresponding operational practices implemented by the testing program described in the report, PHMSA may commence a rulemaking action to promulgate regulations that:

- 1) Allow operators of interstate gas or HL pipeline facilities to use the relevant technology or practice to the extent practicable; and
- 2) Establish technically, operationally, and economically feasible standards for the capability and deployment of the technology or practice.

CONFIDENTIAL BUSINESS INFORMATION

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA; 5 U.S.C. 552), CBI is exempt from public disclosure. If PSEP application information or data contains commercial or financial information that is customarily treated as private by the PSEP applicant, that the PSEP applicant actually treats as private, and that is relevant to the PSEP, it is important that the PSEP applicant clearly designates the submitted information or data as CBI. Pursuant to 49 CFR 190.343, a PSEP applicant may ask PHMSA to give confidential treatment to information the PSEP applicant gives to the Agency by taking the following steps: (1) mark each page of the original document submission containing CBI as “Confidential”; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA-PHP-80, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. Any information or data PHMSA receives that is not specifically designated as CBI will be placed in the public docket for the pertinent PSEP application.

PAPERWORK REDUCTION ACT COMPLIANCE

PHMSA will be coordinating with the Office of Information and Regulatory Affairs within the Office of Management and Budget in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Issued in Washington, DC on January 28, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.